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Lee Kam Lan v Lou Mai Chun & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(IM)(NCvC)-1660–10 OF 2023
SUPANG LIAN, HASHIM HAMZAH JJCA AND WAN AHMAD FARID J
4 DECEMBER 2024

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Succession — Distribution of estate — Will and testament — Appellant's application for distribution of assets pursuant to will allowed by court — Respondents sought to set aside distribution order and assets be distributed in accordance with deed of family arrangement and settlement — Whether respondents' action suitable to be disposed of by way of application under O 14A of Rules of Court 2012 — Whether deed of family arrangement and settlement prevailed over wills — Whether respondents in their capacity as beneficiaries of estate had locus standi to set aside distribution order

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Lou Pak Hoi @ Kwan Wong Moh ('LPH') passed away on 13 February 1986, leaving his last will and testament ('the LPH will') where LPH had appointed his wife, See Toong Looi ('STL'), as the sole executrix of his estate and bequeathed all his assets to her. On 31 October 1986, STL passed away before she could obtain the grant of probate for LPH's estate, leaving the estate unadministered. STL left a will and testament ('the STL will') in which she bequeathed all her inheritance from LPH's estate to her children. The respondents ('plaintiffs') were the daughters of LPH and STL. In the STL will, STL had also appointed her two sons, Loo Yu Pin @ Lou Yew Sing ('LYP') and Lou Ue Kuang @ Loo Yew Quing ('LUK'), as the executors and trustees of her estate. The children of LPH and STL had agreed not to obtain any grant of probate from the LPH will and the STL will. They also agreed to distribute the estates of LPH and STL according to the deed of family arrangement and settlement ('the deed'). LUK passed away on 22 June 1999, and LYP became the sole executor and trustee named in the STL will. The appellant ('defendant'), who was the wife of LUK, was appointed as the lawful administratix for her husband's estate through the grant of a letter of administration. On 15 August 2019, LYP was granted a grant of probate for STL's estate. However, there were no assets in STL's possession since the grant of probate for LPH's estate had not been obtained, and the assets in LPH's estate had not been distributed to STL in accordance with the LPH will before her demise. On 19 June 2020, a letter of administration with will annexed for LPH's estate was granted to LYP. The defendant was appointed as co-administrator of LPH's estate after her application to intervene in the proceeding was allowed by the court. On 3 September 2021, LYP passed away.

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Upon application by the defendant, which was allowed by the court, the defendant became the sole administratrix of LPH's estate. The defendant, without the plaintiffs' knowledge, applied for the distribution of the assets of LPH and STL pursuant to LPH's will which was allowed by the court ('the distribution order'). At the High Court, the plaintiffs sought, among others, for: (a) a declaration that the deed was legal and valid; (b) the distribution order obtained by the defendant be set aside; and (c) the assets of LPH and STL be distributed in accordance with the deed, which had been agreed and executed by all beneficiaries to the estates of LPH and STL. The defendant applied for the disposal of the case on the point of law without the full trial of the action under O 14A r 1 of the Rules of Court 2012. The learned High Court judge ('HCJ') dismissed the defendant's application and hence, this appeal.

Held, allowing the appeal:

(1) Regardless of whether the validity of the deed was disputed or otherwise, it would eventually have to be determined whether the LPH will and the STL will, or the deed should prevail in terms of the administration and distribution of LPH's and STL's estates and assets and the plaintiffs' locus standi to set aside the distribution order. Such questions were suitable for determination without the full trial of the action and would finally determine the entire case therein. Therefore, the HCJ was wrong to hold that the parties had serious disputes on the factual matrices of the case on the grounds that they were disputing the validity of the deed and the distribution order (see paras 31–32).

(2) Since the parties did not dispute the validity of the LPH will and the STL will, the intention of LPH and STL through their respective will and testament must be carried into effect. The deed was executed between the beneficiaries to LPH's and STL's estates without their estates being properly administered in accordance with their respective wills. Therefore, the enforcement of the deed would have the effect of replacing LPH's and STL's intention in their respective will. There was nothing in the pleadings to show that the executors of LPH's estate had either obtained the approval of the court or had duly discharged their obligations under the LPH will before the deed was executed. Hence, the LPH will and the STL will prevailed over the deed (see paras 38, 45 & 48).

(3) The plaintiffs were not beneficiaries named in the LPH will. As such, the plaintiffs did not have any legal interest at this point to apply to set aside the distribution order obtained by the defendant as the administratrix of LPH's estate. Therefore, the plaintiffs did not have the locus standi in their capacity as beneficiaries of the estate of STL to set aside the distribution order until the administration of the estate was completed (see paras 50 & 53).

[Bahasa Malaysia summary

Lou Pak Hoi @ Kwan Wong Moh ('LPH') telah meninggal dunia pada 13 Februari 1986, meninggalkan wasiat terakhirnya ('wasiat LPH') di mana LPH telah melantik isterinya, See Toong Looi ('STL'), sebagai pentadbir tunggal harta pusakanya dan mewariskan semua asetnya kepadanya. Pada 31 Oktober 1986, STL meninggal dunia sebelum dapat memperoleh geran probet bagi harta pusaka LPH, meninggalkan harta pusakanya tidak ditadbir. STL meninggalkan wasiat ('wasiat STL') di mana dia mewariskan semua pewarisannya daripada harta pusaka LPH kepada anak-anaknya. Responden ('plaintif') adalah anak perempuan LPH dan STL. Dalam wasiat STL, STL juga telah melantik dua anak lelakinya, Loo Yu Pin @ Lou Yew Sing ('LYP') dan Lou Ue Kuang @ Loo Yew Quing ('LUK'), sebagai pentadbir dan pemegang amanah harta pusakanya. Anak-anak LPH dan STL telah bersetuju untuk tidak memperoleh sebarang geran probet daripada wasiat LPH dan wasiat STL. Mereka juga bersetuju untuk mengagihkan harta pusaka LPH dan STL menurut surat ikatan pengaturan dan penyelesaian keluarga ('surat ikatan'). LUK meninggal dunia pada 22 Jun 1999, dan LYP menjadi satu-satunya pentadbir dan pemegang amanah yang dinamakan dalam wasiat STL. Pemohon ('defendan'), yang merupakan isteri LUK, dilantik sebagai pentadbir yang sah untuk harta pusaka suaminya melalui surat kuasa pentadbiran. Pada 15 Ogos 2019, LYP telah diberikan geran probet untuk harta pusaka STL. Namun, tidak ada aset dalam milik STL kerana geran probet untuk harta pusaka LPH belum diperoleh, dan aset dalam harta pusaka LPH belum diedarkan kepada STL mengikut wasiat LPH sebelum kematiannya. Pada 19 Jun 2020, surat kuasa pentadbiran dengan wasiat dilampirkan untuk harta pusaka LPH telah diberikan kepada LYP. Defendan dilantik sebagai pentadbir bersama harta pusaka LPH setelah permohonannya untuk campur tangan dalam prosiding diluluskan oleh mahkamah. Pada 3 September 2021, LYP meninggal dunia. Atas permohonan oleh defendan, yang dibenarkan oleh mahkamah, defendan menjadi satu-satunya pentadbir harta pusaka LPH. Defendan, tanpa pengetahuan plaintif, memohon untuk pengagihan aset LPH dan STL menurut wasiat LPH yang telah diluluskan oleh mahkamah ('perintah pengagihan'). Di Mahkamah Tinggi, plaintif memohon, antara lain, untuk: (a) perisytiharan bahawa surat ikatan adalah sah; (b) perintah pengagihan yang diperoleh oleh defendan diketepikan; dan (c) aset LPH dan STL diedarkan mengikut surat ikatan, yang telah dipersetujui dan ditandatangani oleh semua benefisiari harta pusaka LPH dan STL. Defendan memohon untuk pelupusan kes atas dasar undang-undang tanpa perbicaraan penuh tindakan di bawah A 14A k 1 Kaedah-Kaedah Mahkamah 2012. Hakim Mahkamah Tinggi yang bijaksana ('HMT') menolak permohonan defendan dan oleh itu, rayuan ini.

Diputuskan, membenarkan rayuan:

(1) Tidak kira sama ada kesahihan surat ikatan dipertikaikan atau sebaliknya,

ia akhirnya perlu ditentukan sama ada wasiat LPH dan wasiat STL, atau surat ikatan harus diutamakan dalam hal pengurusan dan pengagihan harta pusaka dan aset LPH dan STL serta locus standi plaintif untuk mengetepikan perintah pengagihan. Soalan-soalan sedemikian adalah sesuai untuk ditentukan tanpa perbicaraan penuh dan akhirnya akan menentukan keseluruhan kes tersebut. Oleh itu, HMT adalah salah kerana berpendapat bahawa pihak-pihak mempunyai pertikaian serius mengenai fakta-fakta kes ini atas alasan bahawa mereka sedang mempertikaikan kesahihan surat ikatan dan perintah pengagihan (lihat perenggan 31–32).

(2) Memandangkan pihak-pihak tidak mempertikaikan kesahihan wasiat LPH dan wasiat STL, niat LPH dan STL melalui wasiat masing-masing mesti dilaksanakan. Surat ikatan telah dilaksanakan antara benefisiari kepada harta pusaka LPH dan STL tanpa harta pusaka mereka diuruskan dengan betul mengikut wasiat masing-masing. Oleh itu, penguatkuasaan surat ikatan akan memberi kesan menggantikan niat LPH dan STL dalam wasiat masing-masing. Tidak terdapat apa-apa dalam pliding untuk menunjukkan bahawa pentadbir harta pusaka LPH telah memperoleh kelulusan mahkamah atau telah memenuhi kewajipan mereka di bawah wasiat LPH sebelum surat ikatan dilaksanakan. Oleh itu, wasiat LPH dan wasiat STL diutamakan berbanding surat ikatan (lihat perenggan 38, 45 & 48).

(3) Plaintif bukanlah benefisiari yang dinamakan dalam wasiat LPH. Oleh itu, plaintif tidak mempunyai sebarang kepentingan undang-undang pada ketika ini untuk memohon mengetepikan perintah pengagihan yang diperoleh oleh defendan sebagai pentadbir harta pusaka LPH. Oleh itu, plaintif tidak mempunyai locus standi dalam kapasiti mereka sebagai benefisiari harta pusaka STL untuk mengetepikan perintah pengagihan sehingga pentadbiran harta pusaka selesai (lihat perenggan 50 & 53).

Cases referred to

Chor Phaik Har v Farlim Properties Sdn Bhd [1997] 3 MLJ 188, FC (refd)
Chua Eng Wei & Anor v Liow Eng Keong & Anor [2015] 4 CLJ 1027, CA (distd)
Corbett v Commissioners of Inland Revenue [1938] 1 KB 567, CA (refd)
Dr Barnardo's Homes National Incorporated Association v Commissioners for Special Purposes of the Income Tax Acts [1921] 2 AC 1, HL (refd)
JAKS Resources Bhd v Star Media Group Bhd and other appeals [2023] 6 MLJ 114; [2023] 8 CLJ 351, CA (refd)
Lim Beng Chye v Sally Leong & Ors [1953] 1 MLJ 55, CA (refd)
Lord Sudeley and others v The Attorney-General (on behalf of Her Majesty) [1897] AC 11, HL (refd)
Re Syed Alwi Alkaff, Decd; Alkaff v Alkaff & Ors [1954] 1 MLJ 105 (refd)
Saroja d/o MN Muthupallaniappa v Muthuraman s/o M Karuppiah & Ors

[2012] 10 MLJ 411, HC (folld)
Snelling, Snelling, In re v Hanna [1930] NZLR 426, SC (refd)
Tang Meng Hock v Tang Ming Seng [2010] 1 MLJ 33, CA (distd)
Thein Hong Teck & Ors v Mohd Afrizan bin Husain and another appeal [2012] 2 MLJ 299; [2012] 1 CLJ 49, FC (folld)

Legislation referred to

Contracts Act 1950 s 26
Rules of Court 2012 O 14A, O 14A r 1, O 72 rr 7, 8
Wills Act 1959 ss 2, 17, 18
Wills Ordinance (Cap 53) s 18

Appeal from: Civil Suit No WA-22NCVC-272–05 of 2022 (High Court, Kuala Lumpur)

Joshinae Wong (with Irvin Wong Chee Ming and Nursyazriena bt Ya'akub) (Christina Chia Law Chambers) for the appellant.
Caryn Shua (with Karen Tan) (Richard Tee & Chin) for the respondents.

Hashim Hamzah JCA:

INTRODUCTION

[1] For ease of reference, the parties in the present appeal shall be referred to as they were before the High Court below.

[2] This is the defendant's appeal against the decision of the learned High Court judge ('HCJ') dated 21 September 2023 in which the defendant's application under O 14A of the Rules of Court 2012 ('the ROC 2012') for the disposal of the case on point of law without the full trial of the action ('encl 8') was dismissed with costs of RM3,000, subject to an allocatur fee of 4%.

THE SALIENT FACTS

[3] The salient facts leading to the present appeal are as follows.

[4] Lou Pak Hoi @ Kwan Wong Moh ('LPH') passed away on 13 February 1986, leaving his last will and testament dated 5 November 1981 ('the LPH will'). In the LPH will, the late LPH had appointed his wife, See Toong Looi ('STL'), as the sole executrix of his estate and bequeathed all his assets to her.

[5] On 31 October 1986, STL passed away before she could obtain the grant of probate for LPH's estate, leaving the estate unadministered. The late STL left a will and testament dated 23 October 1986 ('the STL will') in which she

bequeathed all her inheritance from the late LPH's estate to her children. The plaintiffs are the daughters of the late LPH and STL.

[6] In the STL will, the late STL had also appointed her two sons, Loo Yu Pin @ Lou Yew Sing ('LYP') and Lou Ue Kuang @ Loo Yew Quing ('LUK'), as the executors and trustees of her estate.

[7] On 28 November 1996, the children of the late LPH and STL had agreed not to obtain any grant of probate from the LPH will and the STL will. They have also agreed to distribute the estates of the late LPH and STL according to the deed of family arrangement and settlement dated the same ('the deed').

[8] LUK passed away on 22 June 1999, and LYP became the sole executor and trustee named in the STL will. The defendant, who was the wife of the late LUK, was appointed as the lawful administratix for her fate husband's estate through the grant of a letter of administration dated 17 August 2001.

[9] On 15 August 2019, LYP was granted a grant of probate for the late STL's estate through Kuala Lumpur High Court Originating Summons No WA-32NCVC-2186–11 of 2018. However, there were no assets in the late STL's possession since the grant of probate for the late LPH's estate had not been obtained, and the assets in the LPH's estate had not been distributed to the late STL in accordance with the LPH will before her demise.

[10] On 19 June 2020, through Kuala Lumpur High Court Originating Summons No WA-31NCvC-795–06 of 2020, a letter of administration with will annexed for the late LPH's estate was granted to LYP.

[11] On 26 April 2021, the defendant was appointed as co-administrator of the late LPH's estate after her application to intervene in the proceeding was allowed by the court.

[12] On 3 September 2021, LYP passed away. Upon application by the defendant, which was allowed by the court pursuant to an order dated 12 October 2021, the defendant became the sole administratrix of the late LPH's estate.

[13] On 18 November 2021, the defendant, without the plaintiffs' knowledge, applied for the distribution of the assets of the late LPH and STL pursuant to LPH's will through Kuala Lumpur High Court Originating Summons No WA-24NCVC-2321–11 of 2021. The application was allowed by the court on 19 January 2022 ('distribution order').

[14] On 6 December 2021, the plaintiffs filed a notice of application in Kuala Lumpur High Court Originating Summon No WA-31NCvC-795–06 of 2020 to seek leave to intervene and to be appointed and added as the co-administrators for the late LPH's estate. However, this application was dismissed by the court on 14 December 2021.

[15] On 28 December 2021, the plaintiffs filed a citation pursuant to O 72 rr 7 and 8 of the ROC 2012 in the same case. On 6 April 2022, pursuant to the said citation, the court ordered that:

(a) the plaintiffs file a writ action (which was the action filed by the plaintiffs before the High Court below);

(b) the letter of administration granted to the defendant to be deposited into the court until the disposal of the writ action; and

(c) the distribution order obtained by the defendant be put on hold.

[16] In the action before the High Court below, the plaintiffs sought the following reliefs, among others, for:

(a) a declaration that the deed is legal and valid;

(b) the distribution order obtained by the defendant be set aside; and

(c) the assets of LPH and STL be distributed in accordance with the deed, which had been agreed and executed by all beneficiaries to the estates of the late LPH and STL.

[17] The defendant filed a counterclaim against the plaintiffs and named LYP's daughter, Lou Yue Ming ('LYM'), who is the executor of LYP's estate, as the third defendant.

[18] In the defendant's counterclaim, the defendant claimed for the following, and we quote:

> 49. Wherefore, the Plaintiff (in the Counterclaim) hereby counterclaims against each the 1st, 2nd and 3rd Defendants (in the Counterclaim) for the following:
>
> (a) A declaration that the Deceased's Estate shall be administered in accordance with the Order for Distribution obtained on 19.01.2022;
>
> (b) A declaration that the 1st, 2nd and/or 3rd Defendant (in the Counterclaim), has without the authority of a grant of representation, wrongly dealt or interfered with the assets of the Deceased's Estate;
>
> (c) An Order that the 1st, 2nd and 3rd Defendants (in the Counterclaim) do surrender, deliver up and handover possession to the Plaintiff (in the Counterclaim) or to the administratrix for the Deceased's Estate, within fourteen (14) days from the date of this Order, the following and shall

serve on the Plaintiff (in the Counterclaim)'s solicitors an affidavit verifying the same within the said fourteen (14) days:

i) All original document of titles, original sale and purchase agreements, original deed of assignments and all other original documents evidencing the Deceased's ownership including all tenancy agreements and all incidental documents of the immovable properties stated in the List of Assets and Liabilities in the Grant of LAWA dated 6.08.2021 for the Deceased's Estate ('the List of Assets and Liabilities');

ii) a full and detailed account of the immovable properties stated in the List of Assets and Liabilities, what has become of them, and all rent, money and profits derived from the same, from 31.10.1986 to date of this Order;

iii) a full and detailed account of all movable assets of the Deceased's Estate including the affairs and matters relating thereto and not limited to the Deceased's ivory chopsticks, cash, all savings accounts and fixed deposit accounts in banks, safe deposit boxes whether in banks or otherwise belonging directly or indirectly to the Deceased's Estate, and all monies, income or profits made, or paid out, for the period from 31.10.1986 until the date of this Order;

iv) a full and detailed account of all shares belonging to the Deceased's Estate for the period from 31.10.1986 unti I the date of this Order and to deliver and hand over the original share certificates and/or the Bursa Malaysia's Central Depository System ('CDS') accounts of all shares belonging to the Deceased's Estate and/or held in trust by the Defendants or any one of them, for the Deceased's Estate;

v) All assets and monies accounted for pursuant to paragraphs (c)(ii) to (iv) above.

(d) That loss and damages as a result of the 1st, 2nd and 3rd Defendants' (in the Counterclaim) dealing in the assets of the Deceased's Estate, and breaches of fiduciary and trustee duties including failure to account, as suffered by the Deceased's Estate or the Estate of the late Lou Ue Kuang as beneficiary, be assessed, and be paid forthwith by the 1st, 2nd and 3rd Defendants (in the Counterclaim), to the Deceased's Estate and/or to the Estate of Lou Ue Kuang, as the Court may order;

(e) The Plaintiff (in the Counterclaim) be at liberty to apply for further and necessary directions and consequential orders;

(f) Costs of this action to be borne by the Defendants (in the Counterclaim) on a solicitor-client basis; and

(g) Such further relief as this Honourable Court deems fit and proper.

[19] On 21 July 2022, through encl 8, the defendant applied for the disposal of the case on the point of law without the full trial of the action under O 14A

r 1 of the ROC 2012.

[20] The learned HCJ dismissed the defendant's application, hence this appeal.

THE QUESTION OF LAW RAISED BY THE DEFENDANT

[21] In encl 8, the defendant raised the following questions before the High Court, which, according to the defendant, can be summarily determined without the need to hold a full trial, namely:

(a) whether the deed prevails over the LPH will and the STL will; and

(b) whether the plaintiffs, in their capacity as the beneficiaries of the late STL's estate, have the locus standi to set aside the distribution order.

THE FINDINGS OF THE LEARNED HCJ

[22] In summary, the learned HCJ, in dismissing the defendant's application, found that the defendant's posed questions were not suitable for the court's final and summary determination based purely on affidavit evidence at an interlocutory stage without *viva voce* evidence of witnesses in a full trial.

[23] The learned HCJ was of the opinion that the factual matrices were seriously disputed by the parties when the parties disputed the validity of the deed and the distribution order.

[24] The learned HCJ also found that the plaintiffs, as lawful beneficiaries to the late STL's estate, had the locus standi to seek the declaration for the validity of the deed, to apply for the setting aside of the distribution order, and to seek for the estate's assets to be distributed in accordance with the deed.

ISSUES

[25] The defendant raised a total of 16 issues in her amended memorandum of appeal. Ultimately, the question before us is whether the learned HCJ has erred in dismissing the defendant's application under O 14A of the ROC 2012 in encl 8. To that effect, the core issues to be determined in this appeal are as follows:

(a) whether the plaintiffs' action is suitable to be disposed of by way of an O 14A application;

(b) whether the deed prevails over the LPH will and the STL will; and

(c) whether the plaintiffs, in their capacity as the beneficiaries of the late STL's estate, have the locus standi to set aside the distribution order.

A OUR FINDINGS

[26] First and foremost, O 14A of the ROC 2012 states that:

Order 14A Disposal of case on point of law

B Determination of questions of law or construction (O 14A r 1)

1(1) *The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that —*

C (a) *such question is suitable for determination without the full trial of the action*; and

(b) *such determination will finally determine the entire cause or matter or any claim or issue therein*.

D (2) On such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.

E (4) The jurisdiction of the Court under this Order may be exercised by a Registrar.

(5) Nothing in this Order shall limit the powers of the Court under Order 18, rule 19 or any other provisions of these Rules.

Manner in which applications under rule 1 may be made (O 14A r 2)

F 2 An application under rule 1 may be made by a notice of application or, notwithstanding Order 32 rule 1, may be made orally in the course of any interlocutory application to the Court. (Emphasis added.)

[27] The law is trite that O 14A of the ROC 2012 may only be resorted to
G if:

(a) there is no dispute by the parties as to the relevant facts; or

(b) the court, upon scrutinising the pleadings, concludes that the material facts are not in dispute.

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[28] We are guided by the principles in *Thein Hong Teck & Ors v Mohd Afrizan bin Husain and another appeal* [2012] 2 MLJ 299; [2012] 1 CLJ 49, in which His Lordship Hasan Lah FCJ speaking for the Federal Court, held as follows:

I [47] It is trite law that O 14A of the Rules of the High Court 1980 *may only be resorted to if there is no dispute by the parties as to the relevant facts, or that the court, upon scrutinizing the pleadings concludes that the material facts are not in dispute (see Dream Property Sdn Bhd v Atlas Housing Sdn Bhd* [2008] 2 MLJ 812; [2007] 6 CLJ 741). Where the issues of fact are interwoven with legal issues raised, it will be

undesirable for the court to split the legal and factual determination for to do so would in effect be to give rulings in vacuo or on a hypothetical ruling, which the court will not do (see *State Bank of India v Marjani Marketing* 1 March 1991, CA Transcript No 91/0304). (Emphasis added.)

[29] More recently, in *JAKS Resources Bhd v Star Media Group Bhd and other appeals* [2023] 6 MLJ 114; [2023] 8 CLJ 351, His Lordship Lee Swee Seng JCA, in delivering the judgment of this court, states that:

[84] *Understandably, the disposal of a case on points of law would be most helpful when the material or relevant facts are not in dispute*. Otherwise, the court would be deciding a question or point of law in a vacuo. Thus, the Court of Appeal in *Global Indian Education Sdn Bhd v Neeta's Herbal International Sdn Bhd* [2016] 6 MLJ 109; [2016] CLJU 822; [2016] 1 LNS 822 astutely observed as follows:

[24] The law on the scope of O 14A is well settled. *An application under O 14A is inappropriate if there are conflicting allegations of fact. Order 14A cannot be invoked on the basis of assumed facts*. The court ought not to give a ruling under O 14A in vacuo on the basis of hypothetical facts. In *Thein Hong Teck & Ors v Mohd Afrizan bin Husain And Another Appeal* [2012] 2 MLJ 299 the Federal Court opined as follows:

It is trite law that O 14A of the Rules of the High Court 1980 may only be resorted to if there is no dispute by the parties as to the relevant facts, or that the court, upon scrutinising the pleadings concludes that the material facts are not in dispute (see *Dream Property Sdn Bhd v Atlas Housing Sdn Bhd* [2008] 2 MLJ 812; [2007] 6 CLJ 741). Where the issues of fact are interwoven with legal issues raised, it will be undesirable for the court to split the legal and factual determination for to do so would in effect be to give rulings in vacuo or on a hypothetical ruling, which the court will not do (see [2016] 6 MLJ 109 at 122 *State of Bank of India v Mariani Marketing* 1 March 1991 CA Transcript No 91/0304).

[25] The Court of Appeal in *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8; [2003] 4 CLJ 337 laid down some of the relevant factors which the court should consider in dealing with an application under O 14A. As observed by the Court of Appeal:

In our view even if the case appears to be or is complicated it does not mean that the court must shun away from considering the applicability of O 14A and O 33 r 2 in relation to the questions of law posed which are clear and definite and the issues are clear cut. Real and serious attempt must he made to identify the material facts pleaded which are obviously undisputed or which should not have been disputed and then to apply the relevant rule to the facts as found.

It is my view that O 14A gives leverage to the court to finally determine issues such as questions of law or construction which may finally be determined without the need for a full trial of the action.

On a final note, it might be noted that the O 14A regime is largely put in place to

enable courts to effectuate speedy solutions to civil disputes where oral evidence is unnecessary.

[26] Both these cases were affirmed by the Federal Court in the subsequent case of *Kerajaan Negeri Kelantan v Petroliam Nasional Bhd and other appeals* [2014] 6 MLJ 31; [2011] 6 CLJ 649; [2014] 5 AMR 285.

[85] See also: *Kerajaan Negeri Kelantan v Petroliam Nasional Berhad & Other Appeals* [2014] 6 MLJ 31; [2014] 7 CLJ 597 and *Lembaga Pembangunan industri Pembinaan Malaysia v Konsortium JGC Corporation & Ors (Sued As Incorporated Partnership)* [2015] 6 MLJ 612; [2015] 9 CLJ 273.

[86] *The decided cases all speak with one voice that where the relevant facts are in dispute, the procedure of so determining them by way of conflict of affidavit evidence would be most inappropriate without viva voce evidence where under the crucible of cross-examination, the dross may be burnt up leaving the refined truth purified as through the fire of cross-examination*.

[87] Thus in *Su'ot Tebari v Land Custody And Development Authority (LCDA) & Another Appeal* [2020] 10 CLJ 807*, it was held by the Court of Appeal as follows:*

[35] Although the appellant had submitted at length in response to the issue of indefeasibility and limitation in his submission, we are of the view that it would not be necessary to dwell on them at this stage. *At this stage, in disposing of this appeal, it is necessary for us to only deal with the pertinent issue, ie, whether the action was suitable to be disposed of by way of an O 14A application. In determining whether it is suitable to be disposed of by the same, the High Court must first determine that the relevant facts needed in arriving at the determination of the question of law posed in this case are not in dispute*.

[36] Here, we are constraint to say that the relevant facts are clearly in dispute and it is not appropriate to determine the questions of law by relying on affidavit evidence alone. (Emphasis added.)

[30] Turning to the facts in the present case, we found that there was no dispute regarding the LPH will and the STL will. However, the dispute arose when, on the one hand, the defendant was seeking to distribute the assets in the LPH's estate according to the LPH will and the STL will and on the other hand, the plaintiffs were seeking to enforce the distribution of the assets in the LPH's estate in accordance with the deed.

[31] In our considered view, regardless of whether the validity of the deed is disputed or otherwise, the court would eventually have to determine whether the LPH will and the STL will, or the deed should prevail in terms of the administration and distribution of the late LPH's and STL's estates and assets and the plaintiffs' locus standi to set aside the distribution order. For us, such questions are suitable for determination without the full trial of the action and will finally determine the entire case therein.

[32] Therefore, we are of the view that the learned HCJ was wrong to hold that the parties had serious disputes on the factual matrices of the case on the grounds that they were disputing the validity of the deed and the distribution order.

[33] We now turn to consider the first question of law raised by the defendant. The first question is whether the deed shall prevail over the LPH will and the STL will.

[34] Learned counsel for the defendant submitted otherwise. According to learned counsel for the defendant, under the Wills Act 1959, the LPH will and STL Will shall prevail over the deed as the intention of the testator is paramount.

[35] Section 2 of the Wills Act 1959 defines the term 'will' as follows:

> 'will' means *a declaration intended to have legal effect of the intentions of a testator with respect to his property or other matters which he desires to be carried into effect after his death and includes a testament, a codicil and an appointment by will or by writing in the nature of a will in exercise of a power and also a disposition by will or testament* of the guardianship, custody and tuition of any child. (Emphasis added.)

[36] Section 17 of the Wills Act 1959 reads:

> 17 Subsequent conveyance or other acts not to prevent operation of will
>
> *No transfer, conveyance, assignment or other act made or done subsequently to the execution of a will* or codicil of or relating to any property therein comprised, *except an act by which such will* or codicil *shall be revoked* as aforesaid, *shall prevent the operation of the will* or codicil with respect to such estate, right, share or interest in such property *as the testator shall have power to dispose of by will at the time of his death*. (Emphasis added.)

[37] Section 18 of the Wills Act 1959 further stipulates:

> 18 Wills shall be construed to speak from the death of the testator
>
> *Every will shall be construed, with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator*, unless a contrary intention shall appear by the will. (Emphasis added.)

[38] We hold that since the parties in the present case did not dispute the validity of the LPH will and the STL will, the intention of the late LPH and STL through their respective will and testament must be carried into effect.

[39] Pretheroe J, speaking for this court in *Lim Beng Chye v Sally Leong & Ors* [1953] 1 MLJ 55, held as follows:

> *Now the first rule of construction in the case of a will is to give effect to the intention of the testator at the time he made the will*. As long ago as 1780 Buller, J, said '*There is no rule better established than that intention of a testator expressed in his will, if consistent with the rules of law, shall prevail. That is the first and great rule in the exposition of all wills; and it is a rule to which all others must bend*' — *Hodgson v Ambrose* 99 ER 216 at 219. (Emphasis added.)

[40] In *Re Syed Alwi Alkaff, Decd; Alkaff v Alkaff & Ors* [1954] 1 MLJ 105, the testator left a will devising certain specific properties. However, some eight months after making his will, the testator made a settlement containing trusts over these properties, which are at variance with the will. Even the beneficiaries under the devise contained in the will are different from the beneficiaries of the trusts contained in the subsequent settlement.

[41] Ultimately, Brown J held that the trusts created by the will must prevail over the trusts created by the settlement by virtue of s 18 of the Wills Ordinance (Cap 53) (which is similar to s 17 of the current Wills Act 1959).

[42] In the case of *Saroja d/o MN Muthupallaniappa v Muthuraman s/o M Karuppiah & Ors* [2012] 10 MLJ 411 (HC), the deceased died, leaving a will appointing the first defendant (his grandson) and second defendant (one of his children) as executors to his estate. The plaintiff, the second, third and fourth defendants were the children of the deceased. Subsequent to the deceased's death, his children had executed a deed of family arrangement and separate letters of undertaking to divide the deceased's lands equally between them. The plaintiff filed an action claiming, among others, that: (a) the said lands were meant for her only and that she was coerced to sign the deed and the letter of undertaking by the third defendant; and (b) the deed was void for want of consideration and that the deed was against public policy as it allegedly re-wrote the terms of the will.

[43] One of the issues raised for the court's determination was whether the deed was valid and enforceable. Zakaria Sam J (as he then was) found that the deed was 'strictly an agreement between the four siblings to divide equally the properties' and 'the said deed was executed to replace the will of the deceased'.

[44] We agree and adopt the decision of Zakaria Sam J (as he then was) pertaining to this issue with reference to the case of *In re Snelling, Snelling v Hanna* [1930] NZLR 426, as follows:

> [62] *Can the first and second defendants, who have had sworn on oath and represented to this court that they would duly administer the estate of the deceased and distribute the properties of the said deceased as per the will, jettison the will and administer the estate of the said deceased against the wish and intention of the testator by relying on the said deed without leave or approval of the court*?

[63] I seek guidance from the decision of Smith Jin *In re Snelling, Snelling v Hanna* [1930] NZLR 426, at pp 428–429, Supreme Court of Auckland:

> The executors have been granted probate of the will, and they have sworn to administer the trusts of that will. *Before they assume the obligations imposed upon them by the deed of family arrangement, they should be released from the duties imposed on them by the will*. My opinion is that, this course should be followed in all cases of this character. *Accounts should be taken, and the deed should specifically provide for the release of the executors from their obligations under the trusts of the will. The property could then be vested in certain persons as trustees under the deed (whether the same persons as the executors or not) and they could hold it subject to the trusts set forth in the deed*. As the present deed does not specifically release the executors in the manner which I have suggested, I am unable to approve of it as it now stands.

[64] *Unlike the parties in In re Snelling, the defendants in this action never sought the approval of the court for the said deed*. (Emphasis added.)

[45] Similarly, in the present case, the deed was executed between the beneficiaries to the late LPH's and STL's estates without their estates being properly administered in accordance with their respective wills. Therefore, the enforcement of the deed would have the effect of replacing the late LPH's and STL's intention in their respective will. There was nothing in the pleadings to show that the executors of the late LPH's estate had either obtained the approval of the court or had duly discharged their obligations under the LPH will before the deed was executed.

[46] In reply, learned counsel for the plaintiffs brought our attention to the case of *Chua Eng Wei & Anor v Liow Eng Keong & Anor* [2015] 4 CLJ 1027 (CA) and *Tang Meng Hock v Tang Ming Seng* [2010] 1 MLJ 33 (CA).

[47] However, the facts in both cases referred by learned counsel for the plaintiffs are readily distinguishable from the facts in the present case. Both *Chua Eng Wei* and *Tang Meng Hock* are concerned with the issue of whether s 26 of the Contracts Act 1950 renders an agreement made without consideration to be valid if it is made on account of natural love and affection between parties standing in a near relation to each other. In our view, this is irrelevant to the issue in the present appeal.

[48] To conclude, based on the above and the particular facts in the present case, and having gone through the authorities cited by the counsels for both parties, we are of the view that the LPH will and the STL will prevail over the deed. Hence, we answer the first question in the negative.

[49] We now turn to consider the second question raised by the defendant namely whether the plaintiffs, in their capacity as the beneficiaries of the late

STL's estate, have the locus standi to set aside the distribution order.

[50] It is pertinent to note that the plaintiffs were not beneficiaries named in the LPH will. As such, the plaintiffs do not have any legal interest at this point to apply to set aside the distribution order obtained by the appellant as the administratrix of the late LPH's estate.

[51] It is trite that a beneficiary has no interest or title in the property of a testator until the testator's estate has been fully administered. See *Lord Sudeley and others v The Attorney-General (on behalf of Her Majesty)* [1897] AC 11 (HL), *Dr Barnardo's Homes National Incorporated Association v Commissioners for Special Purposes of the Income Tax Acts* [1921] 2 AC 1 (HL) and *Corbett v Commissioners of Inland Revenue* [1938] 1 KB 567 (ECA).

[52] The Federal Court in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 held that by way of analogy, the same principle is applicable when the deceased died intestate.

[53] Therefore, we hold that the plaintiffs do not have the locus standi in their capacity as beneficiaries of the estate of the late STL to set aside the distribution order until the administration of the estate is completed. As such, the second question posed by the defendant should also be answered in the negative.

CONCLUSION

[54] In conclusion, based on all of the above, upon careful perusal of the appeal records, and after hearing all parties to this appeal, we have reached a unanimous decision that there is merit in this appeal.

[55] We found that the learned HCJ had erred in dismissing the defendant's application in encl 8. Since all of the requirements under O 14A of the ROC 2012 have been fulfilled.

[56] Therefore, the appeal is allowed, and the decision of the learned HCJ is set aside.

[57] We hereby order that the plaintiffs' claim against the defendant in paras 43(a), (b) and (c) of the statement of claim are dismissed with costs and the defendant's counterclaim in paras 49(a) and (c) of the counterclaim be allowed with costs.

[58] We award global costs of RM25,000 here and below to the defendant subject to allocator.

Appeal allowed.

Reported by Nabilah Syahida Abdullah Salleh